SBCivil Writ Petition No.5425/2005

Smt.Purodevi
v.
State of Rajasthan & Ors.

Date of Order :: 11th July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.R.Singh, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

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The instant petition for writ is preferred by the petitioner claiming a direction for the respondents to allow her family pension and to make payment of all pensionary benefits to her accruing to her husband Late Shri Lakharam.

In brief, the facts necessary for adjudication of present petition of writ are that Late Shri Lakharam, husband of the petitioner, was employed as a work charged employee with respondents on 25.6.1971 and he was declared permanent w.e.f. 25.6.1981 after completion of 10 years continuous service. Late Shri Lakharam unfortunately died on 1.12.1984 while in service. Being widow of Late Shri Lakharam contributory provident fund was paid to the petitioner by the respondents. Representations then were submitted by her to the respondents to allow family pension but of no consequence, therefore, this petition for writ before this Court is preferred.

While claiming pension it is contended by counsel for the petitioner that being a permanent work charged employee Shri Lakharam is to be treated as a regular government servant in light of judgment of this Court in the case of Sujan Singh v. State of Rajasthan, reported in 1991 WLR(S) 340, and therefore, in view of the notification dated 13.7.1994 issued by Government of Rajasthan, Department of Finance (Gr.2), the respondents were required to seek option from the petitioner for application of pensionary benefits. Counsel for the petitioner has placed reliance upon para 5 of the notification referred, that reads as under:-

> "These orders shall apply to all such work-charged employees who are in the service of Government on the date of issue of this order. Past cases already decided otherwise than in accordance with the provisions of this order, shall not be re-opened. But in respect of pending cases of (i)those employees who have died, the application from the widow/legal heirs for grant of pension would be treated as option. (ii) those employees who have already retired without exercising option may also exercise fresh option under these orders."

It is emphasised by counsel for the petitioner that the petitioner has already opted for

pension under a communication dated NIL which is placed on record as Anx.8.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the notification dated 13.7.1994 is having no application qua the petitioner as it applies to the workman of regular cadre and Late Shri Lakharam was in work charged cadre of the respondents. The fact with regard to submission of option form by the petitioner is not denied by the respondents.

Heard counsel for the parties.

The only reason for denying pensionary benefits to the petitioner as averred in reply to the writ petition is that Late Shri Lakharam was working in work-charged cadre whereas notification dated 13.7.1994 is having application to the work charged employee taken on regular cadre of Government of Rajasthan. There is no doubt that Late Shri Lakharam was working in permanent capacity and no specific order was passed by the respondents to take him in regular cadre. However, this Court in the case of Sujan Singh (supra) has taken a view that an employee declared permanent under the Rajasthan Work Charged Rules, 1964 is to be treated as a regular Government servant and is entitled for all benefits for which a regular Government servant is entitled. In view of the

law laid down by this Court in the case of Sujan Singh (supra) the petitioner's husband is to be treated as a permanent Government servant and the petitioner cannot be discriminated for grant of pensionary benefits vis-a-vis other regular government servants.

Accordingly, this petition for writ is allowed. The respondents are directed to accept the option given by the petitioner for grant of pension being a widow of Late Shri Lakharam. The respondents are further directed to allow pensionary benefits to the petitioner being widow of Late Shri Lakharam w.e.f. 1.12.1984,the day on which Shri Lakharam died. The amount whatever paid to the petitioner against contributory provident fund may be adjusted by the respondents while determining pension of the petitioner and arrears accruing as such in her favour.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.